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An inquiry into the origin of
the Liverpool town dues
London

1857

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AN INQUIRY
INTO
THE ORIGIN
OF THE
LIVERPOOL TOWN DUES.

LONDON:
RICHARDSON BROTHERS, 23, CORNHILL.

1857.

Price One Shilling.

ORIGIN

OF THE

LIVERPOOL TOWN DUES.

THE right of the people of Liverpool to levy the customs called Town Dues being questioned, it has become the subject of a peculiarly interesting investigation to all those who either pay the tolls, or enjoy the benefits derived from them. It may at first appear that this subject is of a strictly legal character, so technical that none but a lawyer should attempt its investigation; but the mode in which the question has recently been raised, and the nature of the tribunal to whose judgment it has been submitted, indicate that the grounds for a technical and judicial decision are not sufficient, and therefore it is necessary to appeal to the legislature for its declaratory fiat. Such an appeal justifies the examination of the subject by those who do not possess either legal training or acumen; whilst the nature of the customs levied demands that all who participate in the advantages derived from them, should ascertain if the right to levy can be equitably exercised. If it cannot, they who adopt that conclusion are bound to co-operate with those who seek for its abrogation; if it can be so

exercised, and is really a vested interest, they are equally bound for themselves and their successors to see that it is maintained uninjured, or, if abrogated, that an equitable compensation is obtained.

It is proposed in the following pages to examine historically the whole of the documentary evidence which has been made public; consisting for the most part of papers laid before the House of Commons' Committee on the Local Charges on Shipping by the Town Clerk, and Mr. Stanistreet. These documents are published in the Appendix to the Committee's Report; they are promiscuously arranged, without much regard to chronological order; it is therefore very difficult to compare them as they are printed, and so they have been copied out or abstracted chronologically with the following result:—

A.D. 1086.—It is recorded in Domesday Book, that in Cheshire the Bishop of the same city holds of the King that which appertains to his bishopric. All the rest of the land of the county the Earl Hugh holds of the King with his men. The land between the Ribble and the Mersey, Roger of Poitou held. Now the King holds it.

THE EARLDOM OF CHESTER.

According to Ormerod, to Hugh Lupus, William I. gave the County Palatine of Chester to hold as freely by the sword, as he held England by the crown. It is important to remember this, as during the continuance of this grant, and I believe it has never been essentially altered, no subsequent grant could in any way affect the privileges or jurisdiction of the Earls of Chester. The grant to hold freely *by the sword*, appears to ex-

plain the words of Domesday Book,—all the rest of the land of the county the Earl Hugh holds of the king *with his men*.

A.D. 1237.—On the death of the seventh earl, John the Scot, who left sisters only, Henry III. thought it not good to make a division of the earldom, it enjoying such regal prerogative; therefore taking the same into his own hands, he gave other lands unto the sisters of John Scot, and conferred the County Palatine on his eldest son. The following are the terms of this grant as cited by Ormerod:—

“ Comitatum nostrum Cestrie, de Rothland et Flint, ac terras nostras ibidem cum omnibus pertinentiis suis habendum et tenendum eidem filio nostro et hæred. suis, regibus Angliæ, una cum feodis milit. ferrensibus in Angliâ quàm aliis; et advocacionibus ecclesiarum, priorarum, hospitalium, capellariorum, domorum religiosorum suorum, cumque libertatibus regalibus, liberis consuetudinibus, franchis, dominiis, hundredis, tanceredis, feriis, mercatis, forestis, chaceis, parcis, boscis, warreniis et omnibus aliis ad eundem comitatum Cestrie, et terras tam in Angliâ quam in Walliâ et marchiâ Walliæ, qualitercumque spectantibus, adeo plenè et integrè, et eisdem modis et conditionibus sicut nos eundem comitatum Cestrie, terras et feodum cum pertinentiis unquam tenuimus sine ullo retenemento,” &c. That is, the prince was to have the earldom as fully and entirely, and in the same manner and conditions, as we (the King) hold the lands and fiefs, with the appurtenances, in the same county of Chester, without any reservation. Since this period the earldom has been held either by the Crown, or the Prince of Wales, with the tenure unaltered.

THE EARLDOM OF LANCASTER.

Recurring to the quotation from Doomsday Book, we see that the King then held the land between the Ribble and the Mersey.

1207.—The first following record having reference to this territory, appears to be a grant from King John to Henry Fitzwarine of Lancaster, of Ravensmoles, Annolnesdale, and the French lea, eightpence rent in the borough of Preston and the English lea, in exchange for Liverpool and Uplitherland, which Henry II. had given to Fitzwarine's father.*

On the same day, August 25th, the King granted a charter to Liverpool conferring on the burgage-holders all the liberties and free customs in the town of Liverpool, which any free borough upon the sea hath.

1229.—On the 19th October in this year, the King granted to Ranulph, Earl of Chester and Lincoln, the whole of the land which he hath between the Ribble and the Mersey; that is to say, the town of West Derby, with the wapentake and all their appurtenances; the borough of Liverpool with the appurtenances; the town of Salford with the wapentake and all their appurtenances; and the wapentake of Leyland with all their appurtenances in demesnes, forests, hays, homages, services, and all other their appurtenances, and with all liberties and free customs to the aforesaid lands, wapentakes, borough, hays, forests appertaining, as is more fully contained in the King's charter to him thereof made.

* There is the following and earlier notice of this Honor in Madox's *History of the Exchequer*: 23 Hen. II.: Radulfus filius Bernardi reddit computum de firma ejusdem Honoris. (Vol. i. chap. 3, note.)

1233.—Agnes, sister or daughter and co-heiress of Earl Ranulph, having married William de Ferrars, Earl of Derby, it is provided, in an apportionment of the late earl's estate, that the castle of Cerdeley, with the manor and appurtenances, shall remain as a capital messuage to her and her husband, and for the present the castle and town of West Derby, with the appurtenances, together with the lands which Earl Ranulph had between the Ribble and the Mersey, which of course included Liverpool.

1242.—In consequence of some trespass of the Earl of Derby, the King had taken possession of the wapentakes or hundreds of West Derby, Leyland, and Salford; and so this year the earl made fine with the lord the King for £100, to have the hundreds restored, with certain limitations cited in the charter; amongst others, that he and his heirs will treat the men between the Ribble and the Mersey as well in respect of the pleas which appertain to the forests, as of others, as they were treated and used in the time of King John, and in the time of the lord Henry the King who now is, until such time that King Henry gave the aforesaid lands between the Ribble and the Mersey to Ranulph, Earl of Chester, from which we may infer that the lords of Chester and Derby had used the men of these hundreds somewhat harshly.

1254.—On the death of William de Ferrars, the King granted all his estates in wardship to Prince Edward his own eldest son, until the lawful age of the earl's heir. The usual custom in those days, when might was required to preserve property, was to grant the estates of minors in wardship to some one of suffi-

cient strength to protect them until the heir was of age.

1266.—Robert de Ferrars, having joined in the Rebellion of Simon de Montford, was attainted; and his estates were granted by Henry III. to his most dear son Edmund, to hold during his pleasure. Early in the following year, the King addressed the abbots, priors, barons, knights, freemen, and all others, the tenants of the lands and tenements which were of Robert de Ferrars; and, after reciting that he had granted to his son Edmund the castles, and all the lands and tenements, with wardships, reliefs, escheats, homages, services, knights' fees, advowsons of churches, and all other their appurtenances, which were of the aforesaid Robert, commanded them "henceforth to be obedient and answerable to the same Edmund, as to your lord in all things which appertain to the premises."

1297.—Earl Edmund was succeeded by his eldest son Henry, who was attainted and beheaded 1322.

1327.—Henry, Edmund's second son, restored in blood and honours; and in 1345 was succeeded by his son Henry.

DUKEDOM OF LANCASTER.

1351.—In this year, March 6th, Edward III., considering the strenuous goodness and excellent wisdom of Henry, Earl of Lancaster, who, yielding to no labour and charge, hath ever shown himself ready to serve the King, as a suitable retribution that may honourably record the remembrances of the whole English nation, and with the assent of the prelates and nobles in Parliament

assembled, conferred upon the Earl the name of Duke of Lancaster.

"And, since it is becoming that addition of honour and advantage should accompany excellency of name, we have granted with cheerful heart, for us and our heirs, unto the aforesaid Duke, that he, for the whole of his life, may have within the same county his chancery and his writs, to be sealed under his seal, to be deputed for the office of the chancellor; his justices to hold as well pleas of the crown as all other pleas whatsoever, touching the common law and the cognisance thereof; and all manner of execution to be made by his writs and his ministers there; and all other liberties and *jura regalia* pertaining to a count Palatine, as freely and entirely as the Earl of Chester is well known to obtain within the same county of Chester (saving always the tenths and fifteenths, and other contributions and subsidies granted, and hereafter to be granted, to us and our heirs by the commonalty of our realm, and the tenths and other contributions granted, and hereafter to be granted, to us by the clergy of the same our realm, or imposed, or to be imposed, upon the same clergy by the apostolic see; and the pardon of life and limbs, in case that any person of the same county, or other person in the same county, ought for any delict to lose his life or limb; and also the superiority and power of correcting those things which shall have been erroneously done there in the courts of the same duke, or if the same duke or his ministers shall have failed in doing justice there also in the courts of the same duke)," &c.

The Dukedom of Lancaster, in so far as is excepted

above, had more limited privileges than the Earldom of Chester; but its possessor had all the other liberties and *jura regalia* of a count palatine *within* the county. Blanche, daughter and ultimately sole heiress of the first duke,* married John of Gaunt, son of Edward III., on whom the dukedom was conferred, 1362; it descended to his son, Henry of Bolingbroke, third duke, afterwards King Henry IV.; since which period the dukedom may be regarded as an appanage of the crown.

THE LORDSHIP OF LIVERPOOL.

Having observed the rights and privileges of the Dukedom or Honor of Lancaster, and the restrictions imposed, firstly, within its limits by the terms of the patent by which it was instituted; and, secondly, on its border towards Cheshire by the prerogatives previously granted to the Earls of Chester, we have now to consider the privileges and rights appurtenant to the Lordship or Manor of Liverpool, parcel of the Honor of Lancaster, which is the property of the borough, and of which the right to levy town dues is claimed to be a portion. The town and lordship of Liverpool was usually let to farm by its successive owners, sometimes to the mayor and burgesses, and sometimes to individuals. By examining the terms of the several lettings, the nature of the rights and privileges let may be most easily determined.

* On the death of the first duke, his estates were divided between his two daughters and co-heiresses; the dukedom and earldom both lapsed, and the barony remained in abeyance until the death of the elder daughter Matilda, when it was revived by Blanche.

1229.—The earliest lease which appears to be in existence is one granted by Henry III., on the 25th March in this year, being the day after his grant of a charter of incorporation, which sets forth that he had granted to his honest men of Liverpool our town of Liverpool, to be held at farm for four years from Michaelmas next, at the yearly rent of £10, paid to his sheriff of Lancaster.

1257.—Henry de Lee, bailiff, renders account for £10 for the town of Liverpool put at farm, with toll, stallage, passage, with two watermills and one windmill; and for 3s. 9d. for rent of the two messuages, and 132s. 3d. for rents of assize of Cnateby, Everton, and Waverton.

1298.—In this year the proceeds of the farm are as follows:—

	£	s.	d.
Rent of assize of the town		8	7 6
Herbage of the garden of the dovehouses		0	10 0
The passage over the Mersey *		1	6 8
The fairs and tolls of the markets, with foreign tolls, about		10	0 0
Perquisites of the courts		2	0 0
Two mills (a watermill and a windmill)		5	marks.

At the periods of the two preceding returns, the rents are paid to the Lord Edmund.

1348.—The farm of the tolls, stallage of the markets and fairs, the passage-boat, one horse-mill, and two windmills, let to John, son of William del More for 26*l.*, payable to the Earl of Lancaster. In the same account appear the following entries:—

* In a grant from Richard III. this is described as “between the town of Lythepole and the county of Chester;” (*Baines's Liverpool*, p. 190;) but this grant is no evidence that the river was parcel of the lordship of Liverpool, any more than the grant of Birkenhead Ferry proves that the same water of Mersey was parcel of the earldom of Chester.

£ s. d.

For the ingress fines, perquisites of the courts, the
perquisites of the Portmote courts . . .
For the customs, anchorage, from wreck of the sea,
waifs, estrays, escheats . . .
For the fishery of the Mersey . . .

Amount of receipts for the last three items, and
tenant's name, not given.

1354.—Henry, Duke of Lancaster, March 24th, lets
to farm to William Fitzadam, of Liverpool, and others,
his town of Liverpool, with the appurtenances, together
with all the mills, rents, and farms whatsoever in the
same town to him appertaining; also the passage of the
water of Mersey, taking for the same as of old time was
wont to be taken; and the perquisites of his courts of
the same town, together with the parcels of turbary be-
neath his park of Toxteth, "which of right have come
"to the hands of us or our ancestors by the death of
"any of our tenants of the same town, so that they
"may dig in the same parcels turves for their own fuel,
"and dry and carry away the same at their will;" also
amendment of the assize of bread and ale, fore-occupiers,
forestallers, butchers, and tanners, and of breach of the
peace and the whole toll of the town, "the same to be
"taken as of old it was wont of right to be taken;"
together with all other profits to him appertaining in the
same town, saving, however, the orchard beneath the
castle, the herbage of the castle-ditch, wreck of the sea,
waifs and strays, and forfeitures of lands and chattels of
felons and fugitives, if any such there be, for ten years
from Michaelmas last, at the rent of 50 marks. He
also grants that no one of the town shall be impleaded
in the county, or in the wapentake, for debt, trespass,
covenant, or other personal matters whatsoever, during
the continuance of the term; and that timber for the

making and repair of the mills may be taken from
his parks of Toxteth and Croxteth, or his wood of
Simondewood.

1374.—John, Duke of Lancaster, renews the lease to
William Fitzadam and some of the parties to the former
lease, November 18, for ten years, by the same covenants
and conditions by which it has been let to farm before
this time, the lessees agreeing to pay two marks of
additional rent.

1393.—Liverpool is worth at farm 38*l.*; whereof, in
allowance of a rent given by Henry, the late duke,
whom God assoil, to the chapel there, 12*s.*; and it is
worth in clear 37*l.* 8*s.*

1394.—John, Duke of Lancaster, August 10, lets to
farm to Thomas de la More, of Liverpool, and others,
his town of Liverpool, with the common pasture lying
between the town and Toxteth Park, and all the mills to
the said town belonging, together with the revenue,
and whatsoever farms in the said town thereto belong-
ing; also the passage-money of the water of Mersey, so
anciently accustomed to be taken; and his particular
courts, together with the parcel of turbary and the right
to cut turves, the assize of bread, the forfeitures of fore-
stallers, butchers, tanners, and peace-breakers; and all
other things which belong to view of frankpledge,
although shedding of blood has been made; also the
goods and chattels of fugitives and felons arising within
the said town; also the punishing of all workmen
dwelling there now or hereafter; and all toll of the said
town to be taken as anciently accustomed; together
with the herbage of the castle ditch, with waifs and
strays, wreck of the sea, and all other profits to the said
town belonging, as well by sea as by land; for seven-

teen years from Michaelmas next, for the rent of 57 marks of silver: exemption from county and wapentake courts, and liberty to cut wood for mills, as in lease of 354.

1400.—John's son, King Henry IV., confirms this lease.

1420.—An order from King Henry to the stewards of Salford and Derby hundreds to distrain "all those who have been mayors and bailiffs of Liverpool since the time of our coronation until now, that they be before the barons of our Exchequer at Lancaster at the next session there to be holden, to render us an account from the time that they have holden our courts at Liverpool, and to answer to us for the issues both of our said courts, and for the toll and other profits by them levied in the meantime as reason demands."

This proceeding looks a little as if the mayors and bailiffs were collecting toll, &c., without adopting the formality of renewing the lease; in the following year we find:—

1421.—The king by the advice of his council (of the duchy,) has granted that the people of Liverpool shall have the farm of the town from Michaelmas last to next Michaelmas for 23*l.*; "in the meantime you advise with the barons of our Exchequer of Lancaster, and also with our receivers there, and that you make search in the best way you know or can, how or in what manner the said people have had the aforesaid farm in the time of our honoured grandfather of Lancaster, or otherwise at any time before this, with all the circumstances and dependencies of the same, and thereof to certify to our said council at Westminster, as early as you well can." July 15.

The result of this inquiry does not appear.

1444.—Henry VI. lets the town to farm to Thomas de Lathome, Esq., with all manner of appurtenances, profits and commodities to the same belonging, (save and except to the king and his heirs, his park of Toxteth to the same town belonging, the profits of turbary called the Oldemosse, and one messuage with its appurtenances, and except the prisage of wines within the port of the town,) and to do and support all manner of charges to the town belonging, or incumbent, which the predecessors of Richard Cross, Robert More and others, late farmers, have been accustomed to do and support, from Michaelmas last, for a term of five years, at the rent of 21*l.* February 15.

1454-5.—The account of the mayor and burgesses for one whole year; for the whole rent there, the farm of the two windmills, the farm of the boat or passage over the water of Mersey there, the farm of the butchers' shambles, and the toll of the market and fairs there, and with the perquisites of the courts so demised to the same mayor and burgesses for a term of ——— years, this being the first, 17*l.* 6*s.* 8*d.*

1466.—The King, Edward IV., lets to Robert Orrell, the town or lordship of Liverpool, with all its appurtenances, for seven years, from next Michaelmas, for 14*l.* yearly. "Provided always, that if any other person be willing without fraud or bad intent to give by way of increase a higher yearly farm, then the aforesaid Robert Orrell shall be bound to give as much, if he shall wish to have the farm." September 20.

1472.—The farm passed into the hands of Edmund Crosse for a term of twelve years from Michaelmas last (1471) at the rent of 14*l.* yearly "and two shillings

"of increase." The property is described as "a certain town called Litherpule in the county of Lancaster, parcel of the duchy of Lancaster, together with two corn-mills and all franchises, customs and liberties whatsoever, and with all other appurtenances to the same town anciently due or belonging."

1475.—The farm is granted to Henry Crosse, for ten years from Michaelmas last, at the rent of 14*l.* for the town and lordship, and 20*s.* each for Akersmyll and Watremylne, (two windmills,) total rent 16*l.* February 20.

How the lease to Edmund Crosse lapsed is not explained; possibly through his death; the lease to Henry contains a provision, that if he should die within the term, the lease should be void and of no force, the indenture in anywise notwithstanding.

1488.—The farm is let by Henry VII. to David ap Griffith, gentleman, for seven years from last Michaelmas, at the rent above-mentioned. May 14.

1502.—The farm is let to David Griffith for another seven years, from next Michaelmas, at the same rents: July 16. It is possible that his former lease had been renewed in 1495.

1505.—The last lease appears to have been cancelled, and a larger farm granted in lieu of it to the same David Griffith, Alice his wife, and Robert his son; it included the town and lordship, with the appurtenances, one boat for the passage over the water of Mersey, the butchers' shambles there, the tolls of the mart and fairs, with the perquisites of courts of the same lordship, and the two windmills, parcel of the manor of West Derby, for twenty-one years, from next Michaelmas, for

the same rent of 16*l.* The farmers to repair, sustain, and maintain all the premises at their own costs in all repairs, which to the lord the King and his heirs in the same pertain. March 4.

1524.—Henry VIII. renewed the last lease for another term of twenty-one years, from Michaelmas, 1526 (when the former grant would expire), at the same rent, to Alice Griffith, widow, and Henry Akers. We may suppose that Alice had lost both husband and son since 1505. The terms of this new lease are similar to those of the old, except that the mills are said to be "within the lordship of West Derby," instead of "parcel of the manor of West Derby;" which would seem to imply that at this date lordship and manor were synonymous terms. Date of new lease, December 2.

1529.—In the lease which was to commence in 1526, the King granted to the same parties the farm of the town and lordship, with the appurtenances, one boat and the passage over the waters of Mersey, the butchers' shambles there, the stallage and tolls of the market and fairs, the perquisites of courts there, "also the farm of the customs and anchorage of keytoll of the water of Mercy, within the lordship of Lytherpole," and "the two mills: the rent of the mills 20*s.* each, the rent for the rest of the farm 14*l.* of ancient farm, and 6*s.* 8*d.* beyond of increase by the year," for a term of twenty years from Michaelmas next. April 30.

1530.—In this year "Henry Ackres demysed, taken, and to farme letten unto Thomas Halghton and others, and the burgesses and comynalty of Lyvpole, all the customes, tolles, fleshamawes, and ferry boate of Lyvpole, with all sails, cables, and other necessities and advantages to the said customes, tolles, flesha-

"mawes, and ferry boate belonging and beforetymes "acostumed and used," for six years, from Michaelmas next, at the yearly rent of £10. There is a covenant to re-deliver and maintain, &c. After the end of the six years, the said parties and the burgesses and commonalty to have, hold, and receive the one-half of the profits abovementioned for the remainder of Ackres' term, paying to him £5 yearly, and one-half of the cost of maintenance. There is a provision that the decease of Ackres shall void this demise.

1537.—It may be supposed that Ackres died about this time, as on February 20th, in this year, the king lets to Thomas Holcroft, Esq., the premises farmed to Alice Griffith and Henry Ackres in 1529, including "the customs and anchorage of keiltolle of "the waters of Mercy, within the lordship of Lither-
"pole," for twenty-one years, from Michaelmas last, at the rents reserved in the same lease; the tenant defraying all costs of repairs.

1540.—A lease between Sir William Molyneux, of Sefton, upon the one party, and Christopher Hoghe, Mayor of Litherpole, and others, upon the other party, whereby it is witnessed, that whereas the King, under the seal of the duchy, had granted the farm to Thomas Holcroft, as in the above recited lease; and also whereas the said T. H., by an indenture dated August 27th, 1538, made between him and Sir W. Molyneux, had demised to Sir W. M. all the premises in the lease before recited for a term of twenty years, from Michaelmas, 1537, if the said T. H. "soe long "doe liff." Now the said Sir W. M., "for certayn "consideracons hym movyng," has granted to the said Mayor of Liverpool and others, "the moyte or halfe"

of his interest in that lease for fifteen years, from Michaelmas next, "if the said Thomas Holcroft soc "long doe liff;" paying, therefore, yearly at Lady-day 3*l.* 11*s.* 8*d.*, at Whitsuntide (or Pentecost) 56*s.* 8*d.*, and at Michaelmas 3*l.* 11*s.* 8*d.* The said Mayor, &c., to bear one-half the cost of maintenance.

1546.—In this year Thomas Holcroft being "desirous "to deliver up the aforesaid indenture * * * to be "cancelled," in order that "the King might graciously "condescend to grant" the farm to Sir William Molyneux, Knight, and Richard Molyneux, his son, the King, on 24th November, did so grant to the Molyneuxes the premises recited in the lease to Holcroft (1537) for a term of twenty-one years from last Michaelmas, at the same rent as charged on Holcroft, 16*l.* 6*s.* 8*d.*

1547.—The Molyneuxes demised the moiety of the above lease, except the mills, to Edmund Gce, of Chester, for eight years, for the rent of 8*l.* sterling, in three instalments of 51*s.* 8*d.* each, which, however, amount to a total of only 7*l.* 15*s.*

1553.—The King and Queen (Philip and Mary) renew the above-recited lease to Sir William Molyneux, deceased, and Richard Molyneux, to the said Richard Molyneux and William Molyneux, his son, for the term of forty-one years from next Easter, at the same rent as before, 16*l.* 6*s.* 8*d.*

1557.—The Molyneuxes, "on the special instance, "motyon, and request of the Right Honourable Henry "Lord Strange, and John Caryll, Esquire, attorney of "the King's and Queen's most honourable court of "their said duchie of Lancaster, as also for dyvers "other consideracions and causes, them the said Sir

"Richard and William Molyneux, his son, movyng," let from year to year, at the will and pleasure of both parties, to John Moore, Mayor, and the burgesses, "all and singular the yssues, profetts, and commodytys arising, comyng, and groynng," which they, the Molyneuxes, have or ought to have by reason of the lease of 1553, except the mills standing or being in the said town or borough, or the liberties of the same, at the rent of 12*l.* 16*s.* 8*d.* (another authority says 11*l.* 11*s.* 8*d.*). The tenants to keep harmless the Molyneuxes "against our sovereigne lord and lady ye Kynge and Queen's highness yt now are, and the heirs and successors of our said sovereigne lady the Queen, for and concerning the farme of the said tounne and borrowe, and all other things which the said Molyneuxes have set to farm to the Mayor, &c. October 7.

1586.—Queen Elizabeth grants to Richard Molyneux, her knight serjeant, son of W. M., now deceased, a renewal of the lease from Philip and Mary (1553) for thirty-one years from last Michaelmas. Rent unaltered. October 8.

1605.—King James renews the last lease for forty-one years, from the date of its expiration in 1607, at the same rents.

1629.—In consideration of certain loans to himself and to King James, Charles I. did give and grant to Edward Ditchfield, John Heighland, Humphrey Clarke, and Francis Mosse, their heirs and assigns for ever, along with other manors, lands, &c., "all that our town and lordship of Litherpooll, parcel of the honor of Lancaster, in the aforesaid county of Lancaster, with every of their rights, members and appurtenances.

"And all that boat and passage over the water of Mersey there, and the butchers' shambles, in the said town of Litherpoole. And also all stallage and tolls of the markets and fairs, with the perquisites of courts, in Litherpoole aforesaid. And all customs, anchorage, and keytowle of the water of Mersey aforesaid, and within the aforesaid town or lordship of Litherpoole aforesaid, then or late in the tenure or occupation of Richard Molyneux, Knight, or his assigns, by a particular thereof mentioned to have been of the yearly rent or value of 14*l.* 6*s.* 8*d.*, and to have been parcel of the lands and possessions of the ancient Duchy of Lancaster." The rent of 14*l.* 6*s.* 8*d.* was reserved to the duchy.

1635.—The abovementioned parties, who were trustees for the city of London, in this year sold their lease to Sir Thomas Walmsley and others, trustees of the Molyneux family.

1672.—Caryll, Lord Molyneux, leased his interest to the Corporation of Liverpool for a term of 1000 years, at the annual rent of 30*l.* The indenture of lease recites that divers variances, suits, controversies and debates had of then late been between the parties, which differences had been since composed, and the agreement of 20th March of this year entered into. The preliminaries of this agreement were arranged in the preceding year.

1700.—There was a re-settlement of the lease in this year, for the residue of the term of 1000 years, supposed to be consequent upon changes in the corporation occasioned by the Revolution of 1688.

1777.—On the 3rd and 4th February, in this year,

the reversion of their lease was conveyed to the Corporation of Liverpool.

The terms of the lease from Charles I. to the citizens of London (1629) are almost identical with those of Henry VIII.'s lease to Alice Griffith and Henry Akers, 1529, and at precisely the same rent, the farm of the town and lordship having experienced no increase of value in the interval of 100 years.

THE CUSTOMS.

The first mention of "Customs" in the foregoing leases is in the grant from Edward IV., in 1472, where, amongst the premises let, are, "all franchises, customs, and liberties;" and the association does not leave any ground for supposing that the customs spoken of were tolls or dues. It appears rather that they were akin to the customs* of cities, towns, and boroughs, (included in the common law, or *lex non scripta* under the head of *consuetudines*), by which persons not freemen were prevented from keeping shops, or using trades or handicrafts within them; and which were not abrogated until about 1837. Such an interpretation is authorised by other documents; for example, by the following Acts of Parliament:—

9 Hen. III. chap. 9.—The city of London shall have all the old liberties and customs (which it hath been used to have). Moreover we will and grant that all the other cities, boroughs, towns, and the barons of the five ports, and all other ports, shall have all their liberties and free customs.

34 Ed. I. chap. 4.—That all clerks and laymen of

* Penny Cyclopædia, art. Customs.

our land shall have their laws, liberties, and free customs as largely and wholly as they have been used to have the same at any time when they had them best; and if any statute has been brought in by us or our ancestors, or any customs brought in contrary to them, or any manner of article contained in this present charter, we will and grant that such manner of statutes and customs shall be void and frustrate for evermore.

1 Ed. III. chap. 9.—Item, the King wills that cities, boroughs, and franchised towns shall enjoy their franchises, customs, and usages as they ought and were wont to do.

14 Ed. III. chap. 1.—That the city of London and all other cities and boroughs of the realm of England have all their franchises and customs which they have reasonably had and used in time past.

Indirectly the farm of such customs would be a source of pecuniary profit to the farmer, who of course made a charge for licence to trade. Hallam* says, one of the earliest and most important changes in the condition of the burgesses was the conversion of the individual tributes into a perpetual rent from the whole borough. The land was then said to be affirmed, or let in fee farm to the burgesses and their successors for ever. The leases above quoted show that this change was never permanently established in Liverpool, the nearest approach to it being in 1672, when Sir Richard Molyneux, the King's farmer, granted to the corporation a lease for 1000 years. But we know that the corporation occasionally granted licences, or sold the freedom of the borough, to the detriment of the King's farmer for the time being. They were probably betrayed into this

* Middle Ages, iii. 32.

by the language of Henry III.'s charter, confirmed by the fact that at various times their ancestors had been in possession of the rights claimed either as farmers directly from the King or Duke of Lancaster, or indirectly as sub-farmers. In consequence of some mistake of this kind, the King, in 1514, directed the following mandate to Sir Wm. Molyneux and others: "Whereas information is made unto us, on behalf of our farmers of our toll within our said town of Liverpool, that whereas we and our progenitors, time out of mind, have had and used to have the tolls and customs of all merchandizes there brought or sold, or thither brought to be uttered and sold, except only of the Mayor and burgesses abiding and dwelling in the said town: so it is now that the said Mayor and burgesses of our said town, contrary to their ancient liberties there, for their own singular lucre and advantage, now of late have made divers and many foreign men, not resident nor abiding in the said town, to be burgesses of the same town, to the intent to defraud us and our right of toll there, as in the said information thereof made, herein enclosed, appeareth more at large, whereby the farm of our said toll there is greatly decayed and diminished, we not willing in no wise to be thus prejudiced and hurt of our said toll, trusting in your wisdoms and indifferences, will and desire you, and nevertheless charge you, that ye four, three or two of you at least, at time convenient by you to be limited, you do repair yourself to our said town, and that ye then and there do enquire of the demeanour of the said Mayor and burgesses concerning our said toll, and others the premises by all ways convenient, as well by the

"examination as otherwise, so that we may come to the true truth therein; and thereupon by your discretion to set such order therein so that our said farm and duty be not diminished by their means in time to come," &c.

Here unquestionably the word *customs* is used to express a toll of some kind upon merchandise. At this date the farm was let to David Griffith, his wife, and son. Between 1472 and the date of this inquiry, the word *customs* does not appear in any of the leases, although the series of lettings is pretty nearly unbroken. In 1529, however, in the lease to Alice Griffith and Henry Akers, appears "the farm of the customs and anchorage of keytoll of the water of Mersey, within the lordship of Liverpool;" and here also the word is used to signify a toll; but this is the first time that it appears to have been used in any lease with that signification. The same form of expression appears to have subsisted in all the leases down to that of Charles I. (1629), in which it is changed to *customs*, anchorage, and keytoll. It appears to be not improbable that the original form involves a clerical error, the words "of" and "and" having been transposed, and that it should read the customs of anchorage and keytoll. There may be some ambiguity as to the difference, if any, between anchorage toll and keytoll, but it is clear that "anchorage of keytoll" involves an error of some kind. It seems that the drafter of the lease in 1629 noticed this mistake, and as the claim of the corporation to levy dues as sub-farmers of the town had been exercised so long, he corrected it into "customs, anchorage, and keytoll," or as three distinct descriptions of dues. Either, as was very natural in Charles I.'s lawyer, not noticing

the arbitrary and illegal character of the dues called customs, or else confusing them with ingates and outgates. As a student of history but no lawyer, it appears to me that the dues, as customs on imports and exports, if ever leviable in law, became illegal when the duchy was declared forfeited and inseparably united to the crown in the reign of Edward IV. So long as the duchy was held by a subject who was a count palatine, I conceive that the grant of the Honor of Lancaster, 1351, was sufficiently comprehensive to carry with it any right the crown then had to levy dues; and that the fear or risk of having this right invalidated by the more strict observance of the statute *De Tallagio concedendo*, may have induced the Duke of Lancaster, when he became King Henry IV., to obtain from his parliament* that the title and revenues should remain to him and his heirs for ever, as a distinct and separate inheritance from the crown. That Act having been not only repealed, but the duchy by request of Edward IV. inseparably united to the crown,† it would appear that the right to levy customs was barred by the statute abovementioned, which provided, amongst other enactments, that no tallage or aid should be imposed or levied by the King or his heirs, without the will and assent of his parliament (1306). This principle is

* *The Charters of the Duchy of Lancaster*, translated and edited by William Hardy, F.S.A., and printed by order of the Chancellor and Council of the Duchy, p. 102.

† Penny Cyclopædia, vol. xiii. p. 296, Art. *Lancashire*, and *Charters of the Duchy*, ut supra, p. 282. It will be observed that the argument proceeds upon an hypothesis which the writer believes to be quite fallacious: *i. e.*, that at the time when the county palatine was founded, the Crown had the right to levy dues on merchandise without the concurrence of parliament.

affirmed again in 12 Car. II. c. 4, § 6:—"And because
"no rates can be imposed upon merchandise imported
"or exported by subjects or aliens, but by common
"consent of parliament."

In the documents put in as evidence by Mr. Shuttleworth, it is recorded* that in 1328 the king, Edward III., granted "to his beloved the bailiffs and good men
"of the town of Liverpool," in aid of the paving of the said town, "from the day of sealing these presents
"unto the end of three years complete next following
"you may take by the hands of those whom you may
"depute thereunto and for whom you shall be willing
"to answer, upon things coming for sale to the same
"town the customs underwritten;" that is to say:—

	d.
Every horse load of corn of whatsoever kind, or of malt - - - - -	0½
Every horse and mare, ox, and cow - - -	0½
Every hide of ditto, ditto, fresh, salted, or tanned - - - - -	0½
Five hogs - - - - -	0½
Ten pigs - - - - -	0½
Ten sheep, goats, or porkers - - - - -	1
Ten fleeces of wool - - - - -	0½
100 woolled sheep skins, and skins of goats -	1
100 skins of lambs, fawns, hares, rabbits, foxes, cats, and squirrels - - - - -	0½
100 of greywork - - - - -	6
Every of quarter of salt - - - - -	0½
Every horsepack of cloth - - - - -	0½
Every piece of cloth sold whole of the value of 40s. - - - - -	0½
Every truss of cloths brought by cart - - -	3
Every 100 of worsted cloths - - - - -	2
Every 100 of linen web - - - - -	0½

* Report on Local Charges on Shipping, p. 455.

	<i>d.</i>
Every 100 of linen web of Aylesham	- - 0½
Every "chef de cendallo afforciato"	- - 1
Every other cendal	- - 0½
Every 100 salt mullets and dried fish	- - 2
Every cart-load of sea fish	- - 4
Every load of sea fish	- - 0½
Every salmon	- - 0¼
Every dozen of lampreys	- - 1
Every 1000 herrings	- - 0¼
Every horse-load of ashes	- - 0½
Every horse-load of honey	- - 1
Every sack of wool	- - 2
Every cart-load of bark by the week	- - 0½
Every cart-load of lead	- - 2
Every tun of wine	- - 2
Every chaldron of sea coals	- - 0½
Every 100 gads of steel	- - 0½
Every cart-load of iron	- - 1
Every horse-load of iron	- - 0½
Every 100 of horse shoes and clouts for carts	- - 0½
1 cwt. avoirdupois	- - 0¼
Every weigh of tallow and grease	- - 1
Every quarter of wood	- - 2
2000 garlick and onions	- - 0½
Every bale of leather	- - 3
100 boards	- - 0½
Every millstone	- - 0½
100 faggots	- - 0¼
1000 turves	- - 0¼
Every cart-load of brushwood or timber by the week	- - 0½
Every hundred of tin, brass, and copper	- - 2
Every truss of any kind of merchandise above the value of 10s.	- - 0½
Every other thing not here specified above 2s. value	- - 0¼

"and we therefore command you that you do take the
 "customs aforesaid until the end of the said three
 "years in form aforesaid; but the term of the said

"three years being completed, the said customs shall
 "altogether cease and be discontinued." February 7.

In 1336 the same king made a similar grant also for three years, then to cease altogether and be determined. February 16. In 1357, Henry, first Duke of Lancaster, made a similar grant for two years, then to cease and be done away with. April 21.

In 1382 the King granted a similar but shorter customs-tariff to the mayor and good men of Liverpool "upon things for sale coming as well to the said town
 "as to the port of the same," for six years, "to be laid
 "out about the pavage of the town aforesaid, and not
 "to other uses"—"and the term of the said six years
 "being completed, the said customs shall altogether
 "cease and be taken away." June 14.

Now it is to be observed of these grants, that the customs are very similar to the existing town dues; that they were essentially temporary in their duration, and for a specific purpose; and that there does not appear to be any historic evidence that they were ever re-granted after 1382, much less that they were permanently established.

The two earlier grants are from Edward III. after the enactment of the statute *De Tallagio concedendo*, but of this monarch it is observed that the fifty years of his reign were a period both of parliamentary taxation on a large scale, and *also of many illegal imposts*. The grants by parliament, indeed, now became almost annual. These repeated grants tended no doubt to establish the practice of the crown coming for supplies to parliament; but Edward also resorted to many arbitrary methods of raising money. Besides granting monopolies, a practice which he is said to have been the

first to introduce, and compelling all persons having estates of a certain value to accept of knighthood, he renewed the old practice of imposing tallages on cities and boroughs; he extorted money from the clergy and others, by what were called forced loans; he even made direct seizures of merchandise and other property on some occasions, just as his grandfather had done. In 1339 he restored, by his own authority, the new customs abolished in the previous reign; and all the opposition of parliament could not prevail upon him to renounce the right he claimed to collect those duties, although he at last consented not to continue them for more than two years. They were maintained, in fact, for a considerably longer period.*

Edward appears to have made use of Liverpool in his expeditions against Scotland; perhaps from this, or at any rate from some cause, he wished to favour the "good people" of Liverpool; and the arbitrary and unscrupulous man described above, would not object to conferring the privilege of customs; he might hope in this way to mitigate the opposition he experienced from parliament. The right, such as it was, seems to have passed to the first Duke of Lancaster, and to have been exercised by him; but we find it again exercised by the crown in Richard II. I have been unable to ascertain the terms upon which this king, and the then Duke of Lancaster (John of Gaunt), stood to each other in 1382; but conjecture that this was one of the periods when the duke and his royal nephew being at feud, the latter might feel himself at liberty to make use of his uncle's property. We are told † that "once the Duke of Lan-

* *Pict. Hist. Eng.*, vol. i. p. 823.

† *Ibid.*, vol. i. p. 790.

"caster was obliged to hide himself in Scotland, and he would not return until Richard publicly proclaimed his conviction of his innocence, and allowed him to travel always with a strong body guard."

It would appear then, 1st, That the imposition of these dues or customs by Edward III. was arbitrary and illegal, because the power to levy was no longer in the crown, having been abrogated by act of parliament* in the reign of Edward I. 2nd, That whatever right the King might claim, passed to the first duke by the terms of his patent, and was exercised by that duke; and was again granted when the duchy was revived in John of Gaunt, who married the first duke's child.

Upon the second corollary it may be observed that the patent † constituting the Dukedom of Lancaster is, on the face of it, of more limited comprehension than that constituting the Earldom of Chester; therefore that the duke could not exercise lordship in Cheshire, especially as the earldom was of prior creation; and consequently that no manor or lordship, "parcel of the Honor of Lancaster," could have any privileges ex-

* Hallam, who with other eminent historians, doubts the authenticity of the Statute, *De Tallagio*, &c., quotes the 5th and 6th sections of the confirmation of the Charters, 25 Ed. I., to the following effect:—"The aids, tasks, and prises before taken are renounced as precedents, and the King grants for him and his heirs, as well to archbishops, bishops, abbots, priors, and other folk of holy church, as also to earls, barons, and to all the commonalty of the land, that for no business from henceforth we shall take such manner of aids, tasks nor prises, but by the common consent of the realm, and for the common profit thereof, saving the ancient aids and prises, due and accustomed."—*Middle Ages*, vol. ii. p. 136.

† *Ante*, p. 9, and *Charters of the Duchy*, ut supra, pp. 9 and 17.

tending further from the Lancashire shore than to the middle of the river, which lawyers call the *medium filum*.

This opinion of the limitation of the lordship is confirmed by the privileges enjoyed by other places on the Mersey. In a grant of the port of Frodsham from Edward I., 1299, to the abbey of Vale Royal, he confers the following rights:—"We concede above for ourselves and our heirs, that the said abbot and monks, and their successors, and their men and tenants, be quit in perpetuity from all toll for their own matters and merchandise, which they may sell or buy for their own use in every market and in all fairs (?); and in the passage of all bridges, roads, and seas throughout all the land, and our realm, and in every other place in which we can give and concede those liberties;" and in like manner, "that all their traders and men be quit from every toll in the places aforesaid; and that the ships of those monks shall have passage through all our realm, free from every exaction and custom." *

The abbot of St. Werburgh, in a plea to a *quo warranto*, 31 Ed. III., claimed wreckage in Bromborough, Eastham, Whitby, Salghall, and Shotwick, the first three places being within the limits claimed for the lordship of Liverpool.†

The prior of Birkenhead similarly claimed, 27 Ed. III., fisheries, wreckage, and boats for all purposes within the bounds of Claughton, from the manor of Oxtou to the line of the Mersey.‡ From a document

* Dugdale's Monasticon, vol. v. p. 711.

† Ormerod, vol. ii. p. 189.

‡ Ibid. vol. ii. p. 254.

exhibited before the Committee on Local Charges on Shipping, it would appear that through the grant of the priory from Henry VIII., the present lord of the manor can only claim keytoll and anchorage for fishing-boats (p. 343).

According to Mr. Part's evidence before the same committee, William the Conqueror granted harbour rights in North Meols to an ancestor of R. Aghton (p. 233): and the manorial rights of Hale, are inconsistent with the extended lordship claimed for Liverpool. Reverting to the levy of town's dues, it may perhaps be asserted that these customs were inalienably united by prescription to the rights of the lordship, however they may have been occasionally usurped by such sovereigns as Edward III. and Richard II. This view, however, receives no confirmation from the following statement in Anderson's *Annals of Commerce*, vol. i. p. 110:—"Their (boroughs) first step towards freedom, doubtless, was that the King and also the lords and ecclesiastical communities did, in process of time, lay a certain annual rent, called a fee-farm rent on their respective towns,* in lieu of and less than—

"1stly. The respective arbitrary tolls and customs for goods bought and sold in markets and fairs.

"2ndly. *Pontage*: a payment for passing over bridges.

* It is of some importance to observe that the lord by such a grant of the town in fee-farm, whatever we may think of its previous condition, divested himself of his property or lucrative dominion over the soil in return for the perpetual rents; so that tallages subsequently set at his own discretion upon the inhabitants, however common, can hardly be considered as a just exercise of the rights of proprietorship.—Hallam, vol. ii. p. 154.

"3rdly. *Passage*: the like for going through gates, &c.

"4thly. *Paige* or *paigium*: not now well understood.

"5thly. *Lestage*: liberty to carry their goods up and down in fairs and markets, wherever they pleased.

"6thly. *Stallage*: a payment for a stall, or a right to have one in fairs and markets.

"7thly. *Carriage*: not now certainly known what was meant by it, &c.

"This brought those towns to a certainty with respect to their ordinary or usual payments to their lords; and as to the tallage (*i. e.* supplies to the sovereign), that was only laid on for extraordinary and known reasons and occasions. This tallage, and the *fee-farm* rent, were the considerations for the liberty of buying and selling toll free, &c., as before recited, which none could enjoy but free burgesses, *i. e.* the inhabitants of such *free towns*."

Now it is to be noted that the opinion implied above that *all* the inhabitants of a free town, taking scot and lot, became *ipse facto* burgesses, is distinctly and repeatedly affirmed in the *History of Boroughs and Municipal Corporations*, by H. A. Merewether, serjeant-at-law, and A. J. Stephens, barrister-at-law; from which it is to be concluded that the restriction of burgess privileges to only a portion of such inhabitants was a gross usurpation, and appears also to have been a breach of the manifest intention of the monarchs, by whom those privileges were conferred, which is stated to be "for the increase or bettering of the town, not to defeat themselves of their *Ferm* due from the towns." *

* *Madox Firma Burgi*, chap. ii. sect. ii., quoted in Anderson's *Annals of Commerce*, p. 66

The terms *scot* and *lot* are defined by Merewether and Stephens as follows:—"In these laws (of William I.), *Scot and Lot*, terms so much used—and we may venture to add so little understood or considered in modern times—are emphatically called the customs of England; and it is obvious that, as they result necessarily from the provisions of the Saxon law, they must have been in practice as long as those laws had been in existence; for it was the very essence of them, that every freeman should contribute to the public charges by paying with all the other freemen his *scot*; and in the same manner take his share with the other freemen in the public personal burdens or *lot*: by performing in his turn such military and civil duties as were uniformly imposed upon all, as serving in the wars, keeping watch and ward, and filling in succession the public offices which were required for the state generally, or locally for the borough." (P. 62.)

The usurpation of burgess-rights is in course of extinction by the operation of the Municipal Reform Act: if the levy of the town's dues is a similar usurpation, which I think the preceding inquiry renders probable, it is to be hoped that it also will be set right. The farming of Liverpool appears to have been quite exceptional from the usage laid down in the extract from Anderson given above; since the leases in the account of the lordship show that the farm was granted by the lord to individuals more frequently than to the corporation; and that the latter never possessed the farm for any very lengthened period until they became sub-lessees of the Molyneuxes in 1557, from which time either in

that character, or as owners, they have enjoyed the benefits that possession conferred.

It would appear from the published records that the corporation of Liverpool "from the time whereof the memory of man is not to the contrary," have been animated by a strong desire in some form or other to enjoy the farm of their ancient and loyal borough. We have seen that in 1514, the King directed an inquisition into their surreptitious manufacture of burgesses, who were supposed to enjoy exemption from the tolls and customs of the port: the result of the inquiry does not appear. However, in 1554, Sir Richard Molyneux, the then farmer, instituted proceedings against the corporation, alleging that they had taken possession of his entire farm (except the mills), without title or right. The ultimate decree of the Chancery of the Duchy in his favour is very comprehensive. It sets forth that the complainants, (Sir Richard's son, William, being joined with him,) and their representatives, "from henceforth shall and may quietly and peaceably at their will and pleasure, have, hold, occupy and enjoy the said town and lordship of Liverpool with the appurtenances in the said county of Lancaster, one boat and passage over the water of Mersey, and also the fleshambles within the said town of Liverpool, and also the stallage and toll of the market and fairs, and also the perquisites and profits of the courts holden and kept within the said town of Liverpool, and also the custom, anchorage, and keytoll of the water of Mersey in the said town and lordship, or appertaining or belonging to the same, with all the profits arising, coming or growing within the said town and lordship, during all such

interest and term of years as they the said complainants have" in the premises, without any interruption of any kind from any person. And it is further ordered by the court, that the officers and inhabitants shall peaceably and quietly permit and suffer the complainants and their legal representatives to have, hold, occupy and enjoy all and singular the premises, and every part and parcel of the same, and also to permit them "to keep courts within the said town and lordship, after such sort and manner, and in such place and places, as the courts within the said town have been used to be kept, and also to levy, perceive, receive, gather and take all and singular the perquisites and profits of courts whatsoever they be, arising and growing by reason of any court kept within the said town and lordship: and also that all the suitors and inhabitants of the same, and all other persons that owe any suit to the same court, shall make and do their suit and service to the same court, in such sort, manner, and condition as they and every of them heretofore have been used and accustomed to the courts holden and kept within the said town aforetime; and also all and singular the profits of the said custom arising and coming by any means within the said town and lordship as well by all free-men of the same town, as also by all foreigners and strangers whosoever they be that bring, transport, or use any kind of merchandize within the said town or lordship, or the liberties of the same, and also the profits of the stallage, passage, anchorage, keytoll, profits of the fairs and markets within the said town and lordship, and also all and singular other profits whatsoever they may be belonging or in anywise appertaining

"to the said town of Liverpool with the appurtenances," without any impediment from any one.

The result of this decree was the lease of 1557 from the Molyneuxes to the corporation, which included the whole farm except the two mills.

Now the above decree suggests the following reflections:—

1. That the description "the said town and lordship of Liverpool with the appurtenances in the said county of Lancaster," effectually precludes the notion of any part being in any other county (Yorkshire or Cheshire, for example,) unless these words have a peculiar signification in legal documents.

2. That at the date of this decree the town of Liverpool did not extend inland further than the line of the old pool,* whilst the limits of the borough or lordship andwards coincided with those of the existing parish. Towards the river I am unable to find any historic evidence that the lordship extended further than that ambiguous line between high and low water-mark, where the foreshore rights of the Crown commence. As it seems now pretty well ascertained that half-tide level is the mean level of the sea, it would be convenient and equitable if that were authoritatively assumed as the limit of the landowner's shore rights.

3. That the freemen enjoyed no exemption from the payment of any customs leviable upon merchandise, which were to be paid "by all the freemen of the same

* Ante the lease of 1394, in which mention is made of "the common pasture lying between the town and Toxteth Park," but also lying within the liberties of the town.

"town, as also by all foreigners and strangers," the latter terms meaning probably non-residents.

The nature of the "custom," the right to levy which is settled by this decree, appears ambiguous; but I think the petition of the complainant and the answers of the defendants afford the means of unravelling this involved knot: complainant claims "the custome and anchorage of keytolle of the seyd water of Mercy within the Lordeshippe of Lytherpole afforesaid"—being the same form of words used in the subsequent grant from Charles I., and which, as observed before, appears to involve a clerical error, the correct rendering of which should be custom of anchorage and keytoll. Passing this, it is to be observed that this is the only *custom* mentioned in the petition; the stallage, tolls of markets and fairs, perquisites of courts, and the ferry and fleshambles are all enumerated, but no other custom. The decree, however, appears to speak of a custom apart from the anchorage and keytoll; how is this? We may find our answer in the answers of the defendants, who whilst they concede the complainant's right amongst others to levy by virtue of his lease, "the custome of anchorage or keytolle of all straungers thider cumyng and none ooder customes, ryghts, or duties cumyng, happyng or rysing in the said Toun of Lyvpole, or within the Liberties of the same," claim "the rest or residue of the sayd customes, ryghts and profits," which they alleged to be due to the burgesses, and payable to the bailiff and head officers of the town by virtue of Henry III.'s charter.* This charter with other privileges granted that merchants might safely and

* The general reader who refers to this charter may derive

securely come with their merchandise, and there safely dwell, and thence safely depart, rendering therefore the right and due customs. But these customs were not granted to the borough, and remained payable to the lord. On this charter, however, the defendants justified their exaction of "the tolle, stallage of fayres and "markets weyth the perquisits of the courtes of the "sayd Borough, and all and every ooder customes thear "due and payabull for merchandize shyyppd or dis- "charged;" which they say, "by the tyme wheareof "the memorie of man is not to the contrarie," the authorities of the borough have perceived, received and taken to their own uses "towards they yerey chargies "and great expences by the like officers theare for the "tyme beyng yearly layd out and bestowyd in and "about the walles of the Toune and Church yard "toward the sea, and ooder they necessarie defences "of the same Boorughe from the sea."

Now we know from the different leases given above, that the corporation had *not* enjoyed the stallage, tolls of markets and fairs, and perquisites of courts from time

assistance from the following explanation of some of the terms used in it:—

The 22nd, 23rd, 24th, and 25th sections of Edward the Confessor's laws, respectively describe the meaning of *soc*, *sac*, *toll*, *them*, and *infrangtheft*,—the first two importing jurisdiction over the territory which belongs to the lord, the third referring to the liberty of buying and selling; the fourth relates to the forfeiture of stolen goods; and the fifth to the jurisdiction over thefts; concluding with the general statement that those who have not these privileges are to do right in the hundreds, wapentakes, and shires.

Quoted in "History of Boroughs and Municipal Corporations," by H. J. Merewether and A. J. Stephens, 1835, p. 50. Again at p. 290. *Soc* being the liberty of separate and distinct jurisdiction, and *sac* the privilege of taking the issues and profits of the court.

immemorial, these having been granted with the custom of anchorage or keytoll, the fleshambles, ferry and mills, to a succession of farmers, for divers terms of years. The inference clearly is, therefore, that the claim to dues on merchandise was equally unfounded with that to the other perquisites; and the court appears to have adopted this inference, deciding that the whole of the profits rising, coming, and growing within the town, belonged to the King's farmer. In 1354, Henry, Duke of Lancaster, granted to his farmers *the whole toll of the town*,* which confirms the decision of the court. But the court did not define what those profits or that custom were: that question was not before them; they merely found that all the custom or profits of the town, whatever they might be, were the property of the farmer; they made their decree large enough to carry these, leaving it to anybody aggrieved by any unjust levy to take his proper remedy at law. The complainant, however, does not appear to claim a specific right to levy dues on merchandise; he merely uses the words of his lease, which clearly involve an error of some kind:—"custome and anchorage of keytolle." This the defendants construe to mean "custome of anchorage or keyl- "tolle;" and I submit that their reading is correct, according to the usage of non-technical language. As stated before, the result of this decision was a compromise, (the usual ending of all the trials on this subject,)

* Yet three years afterwards, whilst this grant was in force, he granted certain town dues on merchandise in aid of the paving of the town, clearly showing that those dues or customs were not included in the farm. In fact they appear to have been on every occasion until 1557 an arbitrary and temporary imposition; about that date they became permanent. See note on page 33.

by which the Molyneuxes transferred their interest to the corporation, who, no doubt, immediately revived the dues upon merchandise, which it does not appear they had the slightest right to impose; and which seem to be in direct violation of a marked constitutional principle; "because no Rates can be imposed upon Merchandize imported or exported by subjects or aliens but by common consent of Parliament."

The corporation records, as published in the *Inquiry by the Municipal Commissioners*, show that after the compromise with the Molyneuxes, that body imposed these dues upon all traders except only the burgesses, though the decree set forth that these were equally liable with non-residents. Finding the exaction submitted to by those who traded direct with the town, they gradually extended the area of taxation over the whole of what is now the customs port, not even excusing the Frodsham vessels, though these were specially exempt by Edward I. from the payment of every exaction and custom.*

* In the 15th century there appears to have been a sort of epidemic amongst guilds and companies *corporate* to make amongst themselves many unlawful and unreasonable ordinances for their own singular profit and to the common hurt and damage of the people, and in 25th Henry VI. were prohibited by parliament. That Act having expired, and the abuses revived contrary to the king's prerogative, it was enacted, 12th Henry VII., c. 26, that no such persons should make any ordinances in disinheritance or diminution of the prerogative of the king, nor of any other: nor against the common profit of the people unless examined by the Chancellor, treasurer of England, &c. This law fell into desuetude through a singular lapse in the Act. The Courts decided that though the making of such ordinance or bye-law involved penal consequences to the framers, parliament had omitted to enact that the bye-law should be penal! *v.* Merewether and Stephens, ut supra, p. 1017. Liverpool, being by

I do not propose to quote any of the documents which speak of the *port* of Liverpool, for they are utterly useless as aids in defining the limits of that port. It is very probable that the Customs Commission 1658 adopted the limits within which the corporation collected town dues. As many vessels used to discharge part of their cargoes in Hoylake, in order that they might be light enough to sail over the flats into Liverpool, the corporation no doubt found themselves defrauded of part of their dues, until they included Hoylake within their jurisdiction. This usurpation, like most others, led to further aggressions, the extent of which was only limited by the fear of provoking resistance. As far as historical evidence goes, there does not appear any reason why the corporation did not extend their limits over a much larger area: though, if they had done so, they might have found in that more extended territory an earlier and more fatal Nemesis.

It appears, therefore, that the following conclusions are rendered extremely probable by the preceding argument.

1. That the bounds of the county of Lancaster never extended beyond the eastern and northern strand of the Mersey.
2. That the earldom or dukedom of Lancaster never legally possessed or exercised jurisdiction over the river between strand and strand.
3. That the lordship of Liverpool being parcel of the Honor of Lancaster, could not derive from that honor any rights or appurtenances never thereto belonging, and

charter of Henry III. a merchant guild. took the epidemic most kindly and profitably!

therefore did not extend beyond the limits of its own strand.

4. Consequently that the river Mersey is now, as it has ever of right been, a Queen's highway, open to all ships satisfying the customs and restrictions imposed by imperial authority alone.

5. That the only custom of the nature of port dues ever granted in farm, or sold by Charles I., was the custom of anchorage and keytoll; which could be levied only within the proper limits of the lordship.

6. That the imposition of town dues, not being of earlier origin, is invalid because contrary to the statute *De Tollagio concedendo*, and that of 25 Edw. I. and to the vital principle of the English constitution.*

7. That the imposition, if valid, can be levied within the limits of the lordship only.

8. That if leviable at all, these dues are leviable upon burgess and non-burgess alike.

INGATES AND OUTGATES.

This inquiry would be very incomplete were it to close without reference to the customs of ingates and outgates, and to the tolls and stallage of markets and fairs, which have been so frequently named as part of the premises leased to the King's farmers. On referring to the quotation from *Anderson's History of Commerce*, on page 33, the reader will see enumerated the several

* The pretence of levying money without consent of parliament expired with Edward III., who had asserted it, as we have seen, in the very last year of his reign. A great council of lords and prelates, summoned in the second year of his successor, declared they could advise no remedy for the king's necessities without laying taxes on the people, which could only be granted in parliament. —*Hallam*, ut supra, vol. ii. p. 216.

tolls usually levied in the name of the manor-lord. These, it appears, were levied in Liverpool until 1819, in which year the corporation obtained an Act of Parliament whereby the ingates and outgates were abolished; and the tolls and stallage of markets and fairs put upon a different basis. The preamble of this Act, 59 Geo. III. chap. 9, sets forth that the Mayor, &c., are entitled, by *prescription and usage*, to certain tolls on articles brought into the town for sale therein, or *passing through the same*, which tolls have been heretofore denominated ingates and outgates, and have been collected and paid at the several entrances into the town; that the number of persons now residing in the neighbourhood, and by whom these tolls have been payable, has greatly increased of late years, and the avenues and entrances leading into the town have also greatly increased, and considerable difficulty has in consequence arisen in the due collection of the tolls, and such difficulties and the expenses attendant upon the collection are likely to increase: and that the same parties are also entitled by *prescription and usage*, and by letters patent from Queen Anne,* to certain tolls and stallage, payable in respect of all articles exposed for sale in the markets and fairs, and that it is absolutely necessary to provide additional space for markets: that the said parties have been at very considerable expense, and are about to incur very considerable additional expense in providing and establishing such additional markets; that it would be beneficial to the public, although attended with loss to the Mayor, &c., if the tolls denominated ingates and out-

* Establishing the Wednesday's market. See Inquiry of Municipal Commissioners, p. 87.

gates were abolished; and it would also be beneficial to the public if certain other tolls and stallage were payable in markets and fairs in lieu of those now payable; it was consequently enacted that the several dues should cease and be abolished; and that other market tolls should be levied according to the space occupied instead of being tolls upon the articles exposed to sale. Clause 5 reserves unimpaired the right of the corporation to any town dues, customs, stallage duties, anchorage, or port duties: or any other tolls or duties whatsoever to which they are entitled. Clause 6 exempts from market tolls any inhabitant of the township of Altcar or the town of Prescott,* or any other persons legally entitled by charter or usage, to a claim of exemption from the then existing tolls.

Clause 14 saves the rights of the Crown, &c.

The above preamble contains additional evidence of the remarkable ignorance of the corporation as to their title to the manorial rights. Only forty-two years had elapsed since they had purchased the reversion, and we find them claiming these rights by prescription and usage! It is difficult to suppose that they really were so entirely ignorant on a subject of such vital importance, and we are almost constrained to consider the assertion as prompted by a daring impudence which is more to be marvelled at than admired; unless, indeed, we assume that with the corporation of Liverpool the time whereof the memory of man goeth not back to the contrary is a very recent period. There is abundant evidence that for centuries past the corporation were most ambitious to have an origin from those dark ages

* See Appendix.

beyond the memory of man. Unlike their noble neighbours of Knowsley and Croxeth, they were not content to date their fortunes from the Conquest, or a few years subsequent thereto: they must have a grander, because more mysterious birth. Unfortunately, however, Domesday Book omits all mention of the town or port, though it does enumerate Smethdown, Wavertree, Everton, Allerton, &c. Liverpool is indiscriminately included in the general description of that territory between the Ribble and the Mersey, *inter Ripam et Mersam*,* which ultimately formed part of the Duchy and Honor of Lancaster. The modern townsman will derive the foundation of Liverpool from Henry II.'s attempts to subjugate Ireland; and her earlier growth and prosperity from the subsequent wars with Scotland and with the unsubdued portion of the Irish people. I have found it extremely difficult to obtain any information upon the subject of ingates and outgates: but we know that in earlier times, those of Edward I. and III., and long subsequently, the export trade was restricted to certain ports, and also that native merchants were prohibited on pain of felony from exporting any of the staple commodities. I believe Liverpool never was the seat of any "staple trade;" certainly not when these dues were instituted, and therefore, if usually leviable upon goods *passing through* the town, they could not be imposed upon either staple or foreign merchandise, which, we assume, it was then illegal to transport through Liverpool. But I venture to think that these dues could not be levied upon goods which merely passed through the town; and this con-

* Does not this description effectually exclude the Mersey, one of the *boundaries* of the lands forming the duchy, from ever having been parcel of the duchy?

ecture receives support from the grants in aid of pavage 1382, *et. seq.*), in which the dues are distinctly specified as leviable "upon things coming for sale to the same town," a specification which does not appear to include *consignments*.

I do not presume to offer any opinion upon the legal value of the evidence upon which these conclusions are based; but I venture to think that it has some historical value. This will, I conceive, be apparent to any one who considers how he would like to hold any private property upon a similar tenure, or to defend his possession, unless the costs of the defence were to be paid out of the estate. It is to be hoped that any Liverpool man, whose mature judgment condemns the imposition of the dues as invalid, will exert himself to stay all further hostile proceedings, and to arrange the early surrender of the alleged right. Such a course may be offensive to a lawyer's *esprit de corps*: he may naturally be desirous of fighting out the fight, from which he gains present respect and consideration, and the hope of future fame, as the able and successful defender of such an important stake. But is not the value of the stake over-estimated? The possession of the revenue derived from the town dues creates a strong feeling of indignation in the minds of those by whom they are paid, but who do not participate in the advantages that revenue confers, or at any rate whose participation is very remote. Nor can this indignation excite surprise when it meets with such general sympathy in Liverpool itself, where the prevalent feeling is, that the dues are "black mail," and should be abolished; the only difference of opinion between Liverpool and Manchester being the mode in which that abolition shall be effected. Under the impression that

the right to levy was indefeasible not only in law but in honour, the former has felt that an adequate compensation should be given for the sacrifice of an estate, the value of which has been greatly enhanced by the liberality and foresight of its owner. On that hypothesis I think Liverpool was right; but can any one who has perused the preceding pages continue to uphold that position? If not, his course is clear,—to advocate the unconditional surrender of that estate.

When this has been made, I believe it will be found that the loss is not nearly so great as may at first appear probable. The fear of losing the town dues has not only led the authorities into much expenditure that otherwise would have been avoided; it has also crippled enterprise, and prevented the equitable adjustment of local taxation. The town dues abolished, the legislature cannot hesitate to put the docks on the same footing as railways and other public works, and render them liable to both poor's rate and borough rates. The coffers of the corporation may suffer to some extent, but to the community who reside in the several townships in which the docks are constructed, the relief will probably be greater than their share of the benefits derived from the town dues. Above all other advantages, will be the removal of a wrong, which is an unfailing source of jealousy and angry feeling towards Liverpool, and a cause of weakness to all. The unfriendly position which Liverpool now holds in the estimation of her neighbours is too well known; remove the unfortunate occasion of disunion, and the district watered by the Mersey, South Lancashire and North Cheshire will be the capital centre of the world's commerce, wielding metropolitical influence, and growing together in unity and prosperity!

APPENDIX.

The reason for the exemption of the township and town mentioned in the text is obscure. In the extracts from corporate records published in the Municipal Inquiry appear the following entries :—

1588.—The Prescott men were ordered to show cause why they should not pay toll as other foreigners ; in the following year they were called together by the mayor “to see how many of them ought to be free.”

1597.—Complaint being made touching all foreign pedlars and foreign artificers frequenting the town to sell their wares, it is demanded to have them expelled, except certain persons of Ormskirk and Prescott, for whom the Earl of Derby has spoken in that behalf, which demand was agreed to.

1646.—It is ordered and agreed that the officers shall demand and take toll from all the Prescott and Altcar men, till they shall produce their charters and grants, and this town better satisfied concerning their pretended privilege, notwithstanding any letters or pretence to the contrary.

1675.—It is ordered that no tolls be taken from the inhabitants of Altcar till the corporation have taken advice from counsell concerning the liberties of Altcar, and the right to exemption.

The result of this reference does not appear in any other form than clause 6 of 59 Geo. III., chap. 9.

Ms. 32295

**END OF
TITLE**